BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KAREN S. REED Claimant VS. **BOSSLER- BROWN & ASSOCIATES, INC.** Respondent AND **AMERICAN COMPENSATION INSURANCE CO.** Insurance Carrier	)	Docket No. 245,765
KAREN S. REED Claimant VS. **FALLEY'S, INC.** Respondent AND **LIBERTY MUTUAL INSURANCE COMPANY** Insurance Carrier	)	Docket No. 245,917

ORDER

Respondent, Bossler-Brown & Associates, Inc., and its insurance carrier, American Compensation Insurance Company, appeal the December 9, 1999 Order for Medical Treatment entered by Administrative Law Judge Bryce D. Benedict. These two claims were consolidated by Order of October 13, 1999.

ISSUES

Claimant suffered repetitive trauma injuries to her upper extremities. Judge Benedict awarded claimant medical treatment against Bossler-Brown and its insurance carrier. Bossler-Brown argues the ALJ erred by not finding the claimant's previous employer, Falley's, Inc., liable for the preliminary hearing benefits. The issues for review are whether claimant's need for medical treatment is the result of personal injury by accident that arose out of and in the course of her employment with Bossler-Brown.

Claimant and Falley's contend Judge Benedict's preliminary hearing order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeal Brief of Respondent, Bossler-Brown & Associates, Inc., and its Insurance Carrier, American Compensation Insurance Company describes the "nature of the case" as follows:

> Claimant, Karen S. Reed, worked for Falley's, Inc. (hereinafter "Falley's") for approximately one and a half years as a clerk and stock person. During the last year with Falley's, she developed carpal tunnel syndrome. Medical records reflect that during this period Dr. Geis felt that surgery might be necessary to cure M[s.] Reed's condition. In the third week of April, 1999, Ms. Reed quit her job at Falley's for a better paying position at Union Pacific, through Bossler-Brown & Associates, Inc. (hereinafter "Bossler-Brown"). At the time she left Falley's, Ms. Reed was still under the care of Dr. Geis, for her carpal tunnel, still taking ibuprofen by prescription and still wearing her bilateral wrist braces at night.
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> During the second or third week on the job with Bossler-Brown, Ms. Reed suffered a temporary flare-up of her carpal tunnel syndrome. She returned to Dr. Geis for treatment and her prescription for ibuprofen was renewed.
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> Ms. Reed was terminated from Bossler-Brown after only three weeks on the job. Since leaving Bossler-Brown, Ms. Reed's carpal tunnel has returned to the same condition that it was in when she left Falley's.
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> Ms. Reed now seeks carpal tunnel surgery under Dr. Wallace at the expense of either Falley's or Bossler-Brown. Judge Benedict, in an Order for medical treatment dated December 9, 1999, ordered the requested medical treatment be provided at the expense of Bossler-Brown and its insurance carrier until claimant is certified as having reached maximum medical improvement.
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> Appellant continues in its assertion that Ms. Reed, during her three-week period of employment at Bossler-Brown, suffered a mere temporary, natural and probable flare-up of her carpal tunnel condition which developed as a result of her activities at Falley's. She did not suffer a new injury or accident arising out of and in the course of her employment at Bossler-Brown. As a result, any awarded medical treatment should be assessed against Falley's and its insurance carrier, Liberty Mutual Insurance Company under Docket No. 245,917.

The Brief of Appellees Falley's, Inc. and Liberty Mutual Insurance Company disputes the allegation that claimant was not injured by her employment at Bossler-Brown.

> The claimant's last day of work at Falley's was April 8, 1999. (P.H. transcript, p. 22). At that time, her hands were not even bothering her. (pp. 22-23). Prior to that time, she was only treated on two occasions for right arm complaints. (P.H. transcript, Respondent's Ex. B).
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> After leaving Falley's, the claimant began working a few days later at PTMW through Bossler-Brown. (P.H. transcript, pp. 22-23). The claimant's work at PTMW was extremely repetitive and required her to lift a lot of heavy parts and constantly peel and tear plastic off of aluminum. (pp. 11, 12, 21). The work activities at PTMW caused injury to the claimant and she was terminated. (pp. 13, 15-16). She received treatment from Dr. Geis, who ultimately ordered an EMG and referred the claimant to Dr. Brett Wallace. Dr. Wallace saw the claimant on July 7, 1999 and recommended surgical procedures to both arms. (Respondent's Ex. A and B).
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> Falley's submits that the liability here must fall on Bossler-Brown. The claimant clearly sustained personal injury by accident during her employment at Bossler-Brown. The date of accident should be the claimant's last day of employment at Bossler-Brown, the date on which they terminated her.

Finally, claimant contends that when she left her job at Falley's for a better paying position with Bossler-Brown she was symptom free, under no medical restrictions and believed she had been released from active treatment by Dr. Dick Geis. She was, however, still taking ibuprofen and wearing wrist splints. After approximately two weeks of hand intensive, repetitive work both of her hands became symptomatic. She was sent by Bossler-Brown, coincidentally, to the same doctor that she had seen while at Falley's, Dr. Geis. Claimant testified that she was thereafter terminated by Bossler-Brown because of her injuries.

Recently, the Kansas Supreme Court in Treaster[1] indicated that the appropriate date of accident for injuries that develop because of repetitive micro-traumas (which this is) is the last date that a worker performs services or work for the employer or is unable to continue a particular job and moves to an accommodated position. Treaster can also be interpreted as focusing upon the offending work activity that caused the worker's injury as it holds that the appropriate date of accident for a repetitive use injury can be the last date that the worker performed his or her work duties before being moved to a substantially different accommodated position.

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[1] Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

> Because of the complexities of determining the date of injury in a repetitive use injury, a carpal tunnel syndrome, or a micro-trauma case that is the direct result of claimant's continued pain and suffering, the process is simplified and made more certain if the date from which compensation flows is the last date that a claimant performs services or work for his or her employer or is unable to continue a particular job and moves to an accommodated position.[2]

In Treaster, the Kansas Supreme Court also approved the principles set forth in Berry,[3] in which the Court of Appeals held that the date of accident for a repetitive trauma injury is the last day worked when the worker leaves work because of the injury. Treaster also takes Berry one step further to include situations where a claimant does not leave work due to the injury.

> We do not limit *Berry* to only situations where the claimant could no longer continue his or her employment because of medical conditions. The expected result of *Berry* was for workers to be allowed the latest possible date for their claim period to begin, not for claimants and respondents to try to pick a date of accident or occurrence that best serves their financial purposes.[4]

Correspondence from both Dr. Geis and Dr. Wallace indicate there was an aggravation of claimant's condition by the work she performed with Bossler-Brown. These opinions are supported by the other medical records in evidence. Obviously, claimant's bilateral repetitive trauma injuries did not originate with her employment at Bossler-Brown. Even so, the Kansas appellate courts, through a line of decisions beginning with Berry, have expressed a policy of establishing a single date of accident for affixing liability for repetitive trauma injuries. That single date, though variously described, generally comes at the end of the series of offending activities. In this case, that series came to an end with the termination of claimant's employment with Bossler-Brown. Accordingly, the ALJ was correct to assess liability for medical treatment with the last employer.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Medical Treatment entered by Administrative Law Judge Bryce D. Benedict on December 9, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

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[2] Treaster, Syl. ¶ 3.

[3] Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

[4] Treaster, at 623.

Dated this ____ day of March 2000.

BOARD MEMBER

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